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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Defendant Rusty Ralph Lemorande
Correspondence Address	RUSTY RALPH LEMORANDE 1245 N CRESCENT HTS BLVD #B LOS ANGELES, CA 90046 UNITED STATES Email: lemorande@gmail.com
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Ralph H Lemorande
Filer's email	lemorande@gmail.com
Signature	/Rusty Ralph Lemorande/
Date	12/04/2017
Attachments	SEND ESTTA. Requests to Admit. Motion to Compel.pdf(1060946 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No: 87090468
Publication date: 11/29/2016
Opposition Number: 91233690
For the Mark: NIGHT OF THE LIVING DEAD:

Rusty Lemorande *in pro per*

Petitioner,

v.

IMAGE 10, INC.

Respondent.

PETITIONER’S MOTION TO COMPEL DISCOVERY

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Petitioner Rusty Lemorande, (“**Lemorande**”), hereby moves the Board for an Order compelling Respondent IMAGE 10, INC. (“**Image 10**”), to respond appropriately to Lemorande’s request to Admit or Deny in accordance with the Federal Rules of Civil Procedure.

In support of this motion, Lemorande states as follows:

A. FACTUAL BACKGROUND

Based on a bonafide Intent To Use, Lemorande diligently researched the mark, “Night Of The Living Dead” (the Mark) and found no registration or evidence of continued or common source use.

Therefore, Lemorande filed his mark application for ‘Motion Pictures’. The USPTO examiner, presumably based on his or her own research, found no conflicts and, therefore, that application was posted for publication, which resulted in an Opposition, by Image 10.

That Opposition made unsubstantiated claims of **prior use, continued use** and **superior common law rights** without stating any geographic limitation.

Lemorande has sought from Image 10 any evidence that those rights can be substantiated, but has received no response. Specifically, Lemorande filed discovery requests to see if there is any evidence of:

- a. Any prior, mark rights to the film created in 1968 (which, incidentally, showed no clear owner of a mark in 1968),
- b. Any continuous use by Image 10 (which, incidentally, was defunct according to Pennsylvania corporate records for almost 45 years before filing the opposition),
- c. Any indication that Image 10 has ever licensed the mark to the many films and TV shows using the same title in the 49 year period following the 1968 movie),

All the above would clearly help Image 10 substantiate its claims.

Lemorande’s discovery requests were met with boilerplate objections, and no production of documents or responsive answers. In effect, little to nothing has been

learned from an exercise of discovery futility. Petitioner knows no more than when he first learned of the Opposition.

In addition, **three follow-up e-mails** sent by Lemorande were met with silence. (Exhibits A, B & C).

B: AS TO THE CONTENT OF IMAGE 10'S RESPONSES

It should be initially noted that Image 10's Responses to Petitioner's Requests to Admit (Exhibit D) are often confusing due to the fact that Image 10, throughout the document, sometimes refers to its responses as "**Responses to Interrogatories**", and, in other instances, as "**Responses to Requests to Admit.**" This lack of care is not helpful, either to Petitioner or, presumably, to the Board.

More specifically, Respondent makes certain contradictory, pattern objections that transform its actual responses into useless or near useless information. For example, in **Item 4** of its preamble, Image 10 states: "*Opposer states that nothing contained in these responses should construed [sic] as an admission relative to the existence or non-existence of any fact ...*"

Such a statement would be welcome in Lewis Carroll's "Alice In Wonderland". In a legal proceeding, it seems an exercise in discovery futility.

If such a contradictory statement were tenable as a defense, there would be no reason for any admittances that would follow, and the proceeding in this matter before the Board would be, largely, a pointless waste of government resources (in addition to the waste of Petitioner's time and efforts and the legal fees paid by Image 10).

In **Item 5**, counsel for Image 10 states: “*Opposer hereby objects to each and every request as being vague and ambiguous.*”

Every request? Such a statement suggests that Image 10 has not even read the entirety of the document. Petitioner consistently uses plain English and common sense queries, avoiding dependent clauses; this presumably, will be evident to the Board upon its review.

In **Item 6**, Opposer states that ‘*each and every*’ request is protected by the **attorney-client privilege** and/or the **work product doctrine**.

The attorney/client privilege is not a complete protective bar to litigation pertaining to business transactions. If that were the case, almost all discovery of such information would be moot in business litigation, and only attorneys would be hired to perform administrative and management roles within a modern business.

As counsel for Image 10 should know, the attorney/client privilege attaches generally only when information is transmitted in anticipation of litigation or when counsel is sought in a business transaction.

Image 10 claims **common law trademark rights** based on, presumably, business transactions concerning the Mark over the course of the last, approximately, 50 years. To claim that all information associated with these transactions is shielded by the attorney-client privilege is to make a mockery of law as it pertains to the normal course of everyday business dealings and transactions.

Moreover, it is unclear what information might fall within this objection that is not subject to protection under the Board’s standing protective order.

Even more than a claim of attorney-client privilege, the **work-product doctrine** requires that the privilege only extend generally to 1) the personal opinions and strategies of an attorney in 2) anticipation of litigation.

It is possible that, in the course of doing business during its approximately two years of existence, Image 10 was involved in litigation or pre-litigation matters pertinent to its maintenance of its purported common law mark, or other litigation. However, in order to protect such information from discovery, Image 10 would need to provide a privilege log, with its attendant detail, to Petitioner in response to his proper and pertinent discovery request.

In **Item 7**, Opposer states that ‘*each and every request*’ is ‘*non relevant*’ to the proceeding. In essence, Image 10 seeks to decide, both for Petitioner and the Board, that the requests are needless and not likely to lead to necessary facts or facts helpful to adjudication and resolution of the matter before the TTAB.

In Petitioner’s experience, in U.S. law, it is a judge who determines the matter of relevance, not an opposing party (in this case the ‘judge’ being the Board). In addition, such a general objection, without specification to any actual, offending requests, seems untenable on its face.

As a general rule, a party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might be reasonably calculated to serve as the basis for an additional claim, defense, or counterclaim. See TBMP § 402.01 and Note 3 cited therein.

Here, the results to Petitioner’s requests could be used for any number of

later claims, including that the mark has been abandoned, or that Image 10 is not licensing or producing films bearing that mark.

All of the requests potentially are pertinent and dispositive to the core, underlying issue in Image 10's opposition which can be stated in three questions: 1) Has Image 10 continuously used the mark-in-question?, 2) Has Image 10 held itself out to the industry and public as the owner of the mark? and, 3) Has Image 10 policed the use of the mark in any way? In order to examine these issues, the Requests seek information as to Image 10's status as a going-concern, currently and historically since 1968, its activities with the USPTO as to trademark registration, prior actions pertaining to the Mark and/or Image 10's commercial undertakings, and the possible relationship between Opposer and some of the entities which have, over the years, used the title "Night Of The Living Dead" or its derivatives.

In **Item 8**, Respondent asserts that 'each and every' requests is "*burdensome* and *oppressive*." As to the request being 'burdensome', it seems to Petitioner that all discovery requests carry some burden, and that 'oppressive', if true, will be evident in a simple review Petitioner's inquiries. Being standard business inquiries relevant to Respondent's assertion of the maintenance of a common law trademark, it is absolutely unreasonable to typify Petitioner's inquiries as '*burdensome and oppressive*'. The Board will, obviously, be the judge of that categorization.

C: SPECIFICALLY AS TO PETITIONER'S REQUESTS #1 TO 10

Please note Requests # 1-5. In each case, Petitioner merely inquires as to Image 10's ownership of **exclusive rights** in common, entertainment

media. However, Respondent finds this simple categorization to be ‘*vague and ambiguous*’. By way of example, one typically knows whether they own a house or car. Clearly a request as to ownership of typical media rights cannot be deemed as ‘vague and ambiguous.’”

Petitioner, in **Items 7-19**, makes a similar, plain English inquiry as to whether Image 10 has produced motion pictures subsequent to production of its one film. Clearly there’s nothing ‘*vague or ambiguous*’ in such a simple inquiry. Image 10, in its response, feels differently.

As to **Item 10** – What could be ‘*vague or ambiguous*’ about whether a Trademark application was ever filed (or not) by Image 10? Perhaps in its response to the Board on this motion, Respondent will explain. It has refused to do so to Petitioner.

In addition, any Trademark Registration sought prior to 2017 would be recorded on the USPTO website. There is no entry. Therefore, how can this inquiry be answered as ‘denied’ in honesty and good faith?

Generally, there is a ‘goose-gander’ aspect to Respondent’s language objections, given Respondent uses much of the same ‘plain English’ in its various discovery requests. It seems disingenuous (and unfair) to suggest Petitioner’s use of such language is in appropriate or ineffective.

D: AS TO PETITIONER’S REQUESTS #11 - 44

The remainder of Petitioner’s requests pertains to whether Image 10 has authorized or licensed the title (i.e. use of the Mark) to approximately 149 motion

picture and television productions to date, as discovered by Petitioner, all produced since the creation of the initial film production, “Night Of The Living Dead”.

Image 10’s response? In every case Image 10 states: “*Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.*” This seems a complete non-response, and a factual impossibility.

Arguably, this is stonewalling at its most apparent. As suggested above, any rational person knows whether they own a car or home; they certainly would similarly know whether they rented out said house or car (the analog to a license or authorization to use a trademark).

Again, such facts are pertinent and dispositive to the core, underlying issue in Image 10’s opposition as stated above.

Lemorande has attempted to resolve this matter cordially and professionally, requesting not once but twice that Image 10 **meet and confer** (Exhibits A and B). As of this date, there has been no response, either by email, letter, phone call or text.

Petitioner admits the following is speculation, but it appears, by the combination of Image 10’s failure to provide any meaningful responses to this and the other two discovery requests propounded, in addition to its stone-cold silence, that there currently exists an absence of good faith by Image 10, constituting a near-mockery of the discovery process, or worse, an attempt to box Petitioner out of his legal right to fair discovery within the Board’s required time frame.

It is not secret that Petitioner is representing himself *in pro per*. Perhaps, in Image 10’s mind this make him unimportant and disqualified to pursue his legal right to

properly contest and adjudicate Image 10's opposition (which Image 10 also has a right to pursue.)).However, petitioner has treated that opposition with dignity, diligence and respect, and Petitioner will continue his efforts, (both time consuming and with other attendant costs), in the good faith belief that the USPTO does not view *in proper* parties, and their respective rights, (especially as to a proper and complete discovery process, essential in all fair adjudication under due process) as a meaningless fiction and waste of everyone's time.

E: CERTIFICATION OF GOOD FAITH EFFORT TO RESOLVE DISPUTE

In accordance with Trademark Rule 2.120(e), Lemorande hereby certifies that he has made a good faith effort to resolve the issues presented in this motion.

Again, please see Exhibit A and B.

F: SUSPENSION PENDING RESOLUTION

With respect to the effect of a motion to compel discovery, the Trademark Rules of Practice provide:

When a party files a motion for an order to compel initial disclosure, expert testimony disclosure, or discovery, the case will be suspended by the Board with respect to all matters not germane to the motion.

37 C.F.R. § 2.120(e)(2).

Petitioner respectfully asks that this matter be suspended, and the trial

dates extended and/or rest pending resolution of this motion.

G: CONCLUSION

For the forgoing reasons, Lemorande respectfully requests that the Board enter an order overruling Image10's objections discussed above and requiring the production

of real responses to Lemorande's Request for Responses to Interrogatories, Set 1 by Image 10 within 21 days of the Order. In addition, the deadlines should be reset following resolution of this motion.

Dated: December 3, 2017,

Respectfully submitted,

Rusty Lemorande
In Pro Per
1245 North Crescent
Heights Blvd.
Los Angeles, CA 90046
Telephone: (786) 600-4655

/Rusty Lemorande/
Rusty Lemorande.
In Pro Per

CERTIFICATE OF SERVICE AND FILING

I hereby certify that a copy of the foregoing PETITIONER'S MOTION TO COMPEL DISCOVERY was served on counsel for Image 10 LLC by e-mailing said copy, as agreed by counsel, on December 3, 2017, to the following email address: Meeks, Michael L. at mmeeks@buchalter.com, Bhatti, Farah P. at fbhatti@buchalter.com, and hblan@buchalter.com

/Rusty Lemorande/
Rusty Lemorande

Serial No: 87090468
Opposition Number: 91233690
Defendant (Lemorande's) Exhibit

EXHIBIT A



Rusty Lemorande <lemorande@gmail.com>

Meet and Confer

Rusty Lemorande <lemorande@gmail.com>
To: "Bhatti, Farah P." <fbhatti@buchalter.com>

Mon, Nov 27, 2017 at 7:31 PM

Hello:

I'd like to schedule a call so we can confer about your discovery responses. I feel they are, for the most part, non productive, providing little actual discovery.

You've previously made assertions as to common law uses by your client. I want to learn about these uses and properly assess my position going forward. However, with no actual evidence from you, and as the result of other responses by you that I find, frankly, evasive, I am left in the dark. And I believe the USPTO will be, too.

I've also made inquiries, in good faith, as to the reasons for your delays, but have received no actual response as far as I know.

If I am wrong as to any of the above, perhaps you can enlighten me. I am very open to be informed.

May we speak soon to discuss this and see if we can work out a remedy to this matter?

Please let me know if you are willing and when would be a good time for you.

Thank you.

Rusty Lemorande

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Sent from Gmail Mobile Tel [323 309 6146](tel:3233096146)

Serial No: 87090468
Opposition Number: 91233690
Defendant (Lemorande's)
Exhibit

EXHIBIT B



Rusty Lemorande <lemorande@gmail.com>

Meet and Confer

Rusty Lemorande <lemorande@gmail.com>

Tue, Nov 28, 2017 at 4:31 PM

To: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>

Sending again. Please respond.

RL

On Mon, Nov 27, 2017 at 7:31 PM, Rusty Lemorande <lemorande@gmail.com> wrote:

Hello:

I'd like to schedule a call so we can confer about your discovery responses. I feel they are, for the most part, non productive, providing little actual discovery.

You've previously made assertions as to common law uses by your client. I want to learn about these uses and properly assess my position going forward. However, with no actual evidence from you, and as the result of other responses by you that I find, frankly, evasive, I am left in the dark. And I believe the USPTO will be, too.

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If I am wrong as to any of the above, perhaps you can enlighten me. I am very open to be informed.

May we speak soon to discuss this and see if we can work out a remedy to this matter?

Please let me know if you are willing and when would be a good time for you.

Thank you.

Rusty Lemorande

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Sent from Gmail Mobile Tel [323 309 6146](tel:3233096146)

--

RH Lemorande
P.O. Box 46771
LA, CA 90046
tel: [323 309 6146](tel:3233096146)

EXHIBIT C



Rusty Lemorande <lemorande@gmail.com>

RE: NIGHT OF THE LIVING DEAD - Answers to Interrogatories [IWOV-BN.FID1193774]

Rusty Lemorande <lemorande@gmail.com>

Tue, Nov 7, 2017 at 7:46 PM

To: "Blan, Henry" <hblan@buchalter.com>

Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Levinson, Lisa" <llevinson@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>, ipdocket <ipdocket@buchalter.com>

Hello

I remain confused. According to the email notice (of the receipt error) you sent me today (below), you attempted to send the answers to interogs today on November 7th. They were due, as you know, no later than Oct 25th.

Am I misinterpreting the notice you sent below? If not, please advise of the date you originally attempted to email me the answers (with a copy of that email), and state why the delay.

Thank you.

RL

----- Forwarded message -----

From: BNFY Administrator <Administrator2@buchalter.com>

To: "Blan, Henry" <hblan@buchalter.com>

Cc:

Bcc:

Date: Tue, 7 Nov 2017 18:42:02 +0000

Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :

-- lemorande@gmail.com

could not be delivered. The problem appears to be :

-- Recipient email server rejected the message

Additional information follows :

-- 5.2.3 Your message exceeded Google's message size limits. Please visit <https://support.google.com/mail/?p=MaxSizeError> to view our size guidelines. i6si1757264qka.221 - smtp

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

On Tue, Nov 7, 2017 at 10:56 AM Blan, Henry <hblan@buchalter.com> wrote:

[Quoted text hidden]

--

[Quoted text hidden]

EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S RESPONSE TO APPLICANT RUSTY RALPH LEMORANDE'S FIRST SET OF REQUEST FOR ADMISSIONS
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PROPOUNDING PARTY: APPLICANT RUSTY RALPH LEMORANDE
RESPONDING PARTY: OPPOSER IMAGE TEN, INC.
SET NO.: ONE (1)

OPPOSER'S RESPONSE TO APPLICANT'S INTERROGATORIES (SET 1)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120 of the Trademark Rules of Practice, Opposer Image Ten, Inc. ("Opposer") hereby responds to the First Set of Admissions propounded by Rusty Ralph Lemorande ("Lemorande"), as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

1. Opposer states that discovery is ongoing and will continue as long as permitted and that Opposer has not yet completed its investigation in this matter. Opposer specifically reserves its right to introduce any evidence from any source and/or testimony from any witness in this matter.

2. Opposer states that its responses are based on its present knowledge, information or belief. Opposer also states that they are responding to the requests as they interpret and understand each request. Further discovery and investigation may reveal information not presently known to Opposer upon which Opposer may rely at the time of trial. Opposer reserves its right, without assuming any obligation not required by law, to amend or supplement its responses to the requests as necessary.

3. Opposer states that the information and/or documents provided in its responses to the interrogatories do not constitute an admission that such information is relevant to the pending litigation. Opposer specifically reserves all objections to the relevancy or admissibility at trial, or in connection with any motion, hearing or other proceeding, of any information provided.

4. Opposer states that nothing contained in these responses should be construed as an admission relative to the existence or non-existence of any fact and no response is to be considered an admission about the relevance or admissibility of any information contained herein.

5. Opposer hereby objects to each and every request as being vague and ambiguous.

6. Opposer hereby objects to each and every request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. No response contained herein will include such privileged information.

7. Opposer objects to each and every request as seeking information that is not relevant to the proceeding. Opposer further objects that Applicant has failed to show a basis for seeking any of the information including any showing that such admission is likely to lead to the discovery of admissible evidence.

8. Opposer objects to each and every request as being burdensome and oppressive and to the extent the request seeks the summary of information, then Applicant is in the same position as Opposer to create any such summary and if Opposer is required to provide such information, Lemorande should be required to prepare any such summaries from the documents produced.

9. Opposer expressly incorporates this Preliminary Statement into each of the following responses.

RESPONSES

REQUEST FOR ADMISSION NO. 1:

Admit that the Image 10 does not own the exclusive rights to any motion picture entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Deny

REQUEST FOR ADMISSION NO. 2:

Admit that the Image 10 does not own the exclusive rights to any television shows entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Deny

REQUEST FOR ADMISSION NO. 3:

Admit that the Image 10 does not own the exclusive rights to any commercial video entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Deny

REQUEST FOR ADMISSION NO. 4:

Admit that the Image 10 does not own the exclusive rights to any audio program "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Deny

REQUEST FOR ADMISSION NO. 5:

Admit that the Image 10 does not own the exclusive rights to any video program entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Deny

REQUEST FOR ADMISSION NO. 6:

Admit that the Image 10 has not produced a motion picture in more than 10 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Deny

REQUEST FOR ADMISSION NO. 7:

Admit that the Image 10 has not produced a motion picture in more than 20 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Deny

REQUEST FOR ADMISSION NO. 8:

Admit that the Image 10 has not produced a motion picture in more than 40 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Deny

REQUEST FOR ADMISSION NO. 9:

Admit that the Image 10 has not produced a motion picture in more than 45 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Deny

REQUEST FOR ADMISSION NO. 10:

Admit that Image 10 has not sought Federal Trademark registration, since the film's creation in 1968, prior to 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Deny

REQUEST FOR ADMISSION NO. 11:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2014 and directed by Chad Zuver.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 12:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2013 and directed by Samuel Victor.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 13:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled CHILDREN OF THE LIVING DEAD, directed by Tor Ramsey in 2001.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 14:

Admit that Image 10 did not authorize or license use of the title, ANOTHER NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2011 and directed by Alan Smithee.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 15:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: GENESIS, directed by Matt Cloude in 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 16:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: Rebirth, directed by Roger Conners in 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 17:

Admit that Image 10 did not authorize or license use of the title, HOUSE OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD 3D directed by Ray Austin in 1974.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 18:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OF THE LIVING DEAD directed by Albert Cochran in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 19:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: REANIMATED, directed by Mike Schneider in 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 20:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: REBOOT directed by Lewis Guthrie in 2013.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 21:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: RESURRECTION directed by James Plumb in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 22:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OPENING NIGHT OF THE LIVING DEAD, directed by Joshua Dickinson in 2014.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 23:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: DARKEST DAWN, directed by Zebediah De Soto and Krisztian Majdik in 2015.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 24:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NERD OF THE LIVING DEAD directed by Stu Dodge in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 25:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled ONE FOR THE FIRE: THE LEGACY OF NIGHT OF THE LIVING DEAD, directed by Robert Lucas in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Deny

REQUEST FOR ADMISSION NO. 26:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled SEXY NIGHTS OF THE LIVING DEAD, directed by Joe D'Amatz in 1980.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 27:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD 3D: RE-ANIMATION, directed by Jeff Broadstreet in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 28:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Brian Yuzna in 1993.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 29:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD II, directed by Ken Wiederhorn in 1988.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 30:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Brian Yuzna in 1993.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 31:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD: RAVE TO THE GRAVE, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Ellory Elkayem in 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 32:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: NECROPOLIS, directed by Ellory Elkayem in 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 33:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled PARIS BY NIGHT OF THE LIVING DEAD, directed by Gregory Morin in 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 34:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled OPENING NIGHT OF THE LIVING DEAD, directed by Jonathan McDevitt in 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 35:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled OPENING NIGHT OF THE LIVING DEAD, directed by Shalena Oxley in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 36:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD, directed by Rich P. Matthews in 2004.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 37:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled STRANGE NIGHT OF THE LIVING DEAD, directed by Roman Soni in 2014.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 38:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD MEXICANS, directed by Nicholas Humphries in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 39:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD PHONE, produced in 2015.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 40:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled MISLEAD: NIGHT OF THE LIVING DEAD, produced in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 41:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE SO LIVING DEAD GUY, directed by Michael Kesler in 2002.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 42:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Anna Humphries in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 43:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Steve Look in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 44:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for any of the following T.V. Episodes:

Night Of The Living Dead 1991 An Actor's Life For Me
Night Of The Living Dead 2007 Crossing Jordan
Night Court Of The Living Dead 1988 Night Court
Night Of The Living Dead Monrovia 2012 Horror Kung-Fu Theatre
Night Of The Living Dead KHIZ 2001 Horror Kung-Fu Theatre
Night Of The Living Dead Dead Bigfoots 1999 Horror Kung-Fu Theatre
Night Of The Living Dead Leprechauns 2004 Horror Kung-Fu Theatre
Night Of The Living Dead Elvises 1991 Horror Kung-Fu Theatre
Dead Of The Living Night 2001 Horror Kung-Fu Theatre
Night Of The Living Dead: Just A Girl 2014 Longbox of the Damned
Night Of The Living Dead Beverly Hills 2002 Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1 2016 Angry Internet Personality

Night Of The Living Dead: Part 1 2012 Survival of the Dumbest
Night Of The Living Dead Reanimated (2009) 2010 The Schlocky Horror Picture Show
Night Of The Living Dead Boyle Heights 2009 Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx 2012 Survival of the Dumbest
Night Of The Living Dead Beverly Hills 2002 Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1 2016 Angry Internet Personality
Night Of The Living Dead: Part 1 2012 Survival of the Dumbest
Night Of The Living Dead Elvis's KHIZ 2003 Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx 2012 Survival of the Dumbest
Night Of The Living Dead: Part 2 2016 Angry Internet Personality
Night Of The Living Dead Elvis's Diamond Bar 1995 Horror Kung-Fu Theatre
Night Of The Living Dead East Los Angeles 2007 Horror Kung-Fu Theatre
A Night for the Living, a Mourning for the Dead 2012 Blade

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

Dated: October 11, 2017

Respectfully Submitted,

/fbhatti/

Farah P. Bhatti
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CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon Applicant on this 11th day of October, 2017, by First Class U.S. Mail, postage prepaid, at the following address:

Rusty Ralph Lemorande
245 N. Crescent Hts, Blvd. #B
Los Angeles, California 90046

/fbhatti/

Attorney for Opposer